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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 1016

WILLIAM H. FRAZIER and CLARICE REED,
Petitioners,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

Petitioners, William H. Frazier and Clarice Reed, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case September 2, 1966.

OPINIONS BELOW.

The United States District Court for the Middle District of Tennessee did not render an opinion. The opinion of the Court of Appeals is reported at 365 F. 2d 316.

JURISDICTION.

The judgment of the Court of Appeals affirming the conviction below was entered on September 2, 1966. An order denying petitioners' petition and supplemental petition for rehearing was entered on December 2, 1966. By order of Mr. Justice Potter Stewart, the time for filing a petition for a writ of certiorari was extended to and including February 1, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

STATUTES INVOLVED.

Section 7201 of Title 26, United States Code, provides:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000.00, or imprisoned not more than five (5) years, or both, together with the costs of prosecution.

Section 2 of Title 18, United States Code, provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

QUESTIONS PRESENTED.

I.

Whether the Government may utilize a joint net worth and expenditures method of income reconstruction in a criminal tax fraud prosecution of two individuals—one charged as principal and the other as aider and abettor—to prove their joint net worth and expenditures, which attributes all of the alleged under-statement of income to the principal, where the record discloses that his co-defendant made all of the expenditures which the Government had relied upon to prove the alleged unreported income and that she herself had a likely source of unreported income for a substantial period of time both before and during the tax period in question?

II.

Whether two defendants may be convicted—one of the crime of income tax evasion, and the other of the aiding and abetting therein—upon the uncorroborated testimony of one witness whose prior sworn statements given to the government and whose tax returns are at essential variance with his testimony?

III.

May a defendant be convicted of aiding and abetting the crime of income tax evasion upon an indictment in each count charging that she "did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by . . . [the principal] to the United States of America . . . by filing and causing to be filed with the District Director of Internal Revenue . . . a false and fraudulent income tax return" where the record fails to disclose any evidence that she in any way participated in the preparation of filing of the returns in question?

STATEMENT.

On March 20, 1964, indictment was filed in the United States District Court for the Middle District of Tennessee, Nashville Division, charging the defendants, William H. Frazier and Clarice Reed, with violation of Title 26, United States Code, Section 7201, for attempting to evade and defeat a large part of the income tax due and owing by the said Frazier for the years 1958, 1959 and 1960, by filing and causing to be filed with the District Director of Internal Revenue false and fraudulent income tax returns of the said William H. Frazier for those years. Upon pleas of not guilty and after a bench trial, the defendants were convicted and found guilty as charged, the defendant Frazier being sentenced to five (5) years' imprisonment and a $6,000.00 fine and the defendant Reed to three (3) years' imprisonment.

The judgment of the Court of Appeals affirming the conviction below, was entered on September 2, 1966. An order denying petitioners' petition and supplemental petition for rehearing was entered on December 2, 1966. The mandate of the Court of Appeals having been stayed, the defendants remain released upon their bonds pending appeal.

The three count indictment charges that the defendants, William H. Frazier and Clarice Reed, for each of the taxable years 1958, 1959 and 1960, "did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by William H. Frazier to the United States of America . . . by filing and causing to be filed with the District Director of Internal Revenue . . . a false and fraudulent income tax return". The record discloses that the defendant Frazier for those years, did file federal income tax returns with the District Director of Internal Revenue at Nashville. In conformity

with a bill of particulars ordered by the Court, the Government, through stipulated proof and the testimony of witnesses, showed expenditures made by William H. Frazier and/or Clarice Reed, during the years at issue, in excess of the income reported by them individually and separately and attributed such excess to the defendant Frazier. The Government, in its brief to the Court of Appeals below, concedes that its reconstruction of the defendant Frazier's income by means of a joint net worth and expenditure method of income reconstruction, including therein the defendant Reed's assets and expenditures, is, in this instance, without precedent. Moreover, while the defendant Frazier had a likely source of cash income from his gambling activities during the net worth period, the record also discloses that the defendant Reed had access to substantial cash sums, through her operation of various retail liquor stores during the years 1948, 1949, 1950, and again from 1953 until her sale of the "Stockman's" liquor store in 1959, all tending to negate the inference that any unexplained joint net worth increase or expenditure during this period must be attributed to the defendant Frazier. In view of the fact that the instant case admittedly extends the use of the net worth method of proof beyond previously sanctioned limits, its use in securing the convictions below should be carefully scrutinized by this Court for the pitfalls against which it cautioned in **Holland v. United States**, 348 U. S. 121 (1954).

In connection with the second question presented, all of the foregoing statement is particularly relevant since Frazier's alleged understatement of income for the three years involved in the approximate amount of $70,000.00 is based upon two transactions.

One transaction in the amount of $60,000.00 relating to the alleged purchase of one-half (½) interest in the Park

View Motel in installments in 1958 and 1959 is solely dependent upon the testimony of the witness, Berryman, both as to its classification as an expenditure and its connection with the defendant Frazier.

This testimony from a witness of very doubtful credibility by reason of his previous record of felony convictions is materially at variance, not only with prior sworn statements given by him to the Government, but also with his income tax returns for the period in question, and a recorded deed contemporaneously executed showing the transfer of the one-half (½) interest to the defendant Reed was in consideration of Ten ($10.00) Dollars and the promise of personal services yet to be rendered rather than any substantial cash consideration.

The remaining alleged understatement of income by the defendant Frazier is more than accounted for by the second transaction consisting of a publicly recorded mortgage loan from the defendant Reed to one Hudgins in the amount of $12,000.00, which is not at all necessarily attributable to the defendant Frazier if cognizance is taken of the availability of unexplained funds to the defendant Reed.

The Court of Appeals below misplaced reliance upon **United States v. Johnson,** 319 U. S. 503 (1943), and answered the third question presented in the affirmative, which relates to the propriety of a defendant's conviction on a charge of attempted tax evasion **by filing and causing to be filed** upon a record devoid of any evidence connecting her with the preparation or filing of the tax returns in question.

It is respectfully submitted that the Court of Appeals in the instant case misread the **Johnson** case as precedent for the propriety of a **filing** charge upon facts of concealing, although the record in **Johnson** makes it clear that

the language charging the aiders and abettors in that case related to their acts of concealment and not to acts in any way related to the filing of the principal's returns.

The Court below in so holding is in apparent conflict with the Court of Appeals for the Fifth Circuit in two of its decisions rendered in the cases of **Vloutis v. United States**, 219 F. 2d 782, 790 (1955), and **Bentham v. United States**, 215 F. 2d 472, 473 (1954), both rendered subsequent to the decision in the **Johnson** case.

Respectfully submitted,

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